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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**Docket No.** TSCA-07-2003-0306

## Introduction

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is Dewayne Pool, 5420 Phelps, Kansas City, Missouri 64136.

Complainant's Allegations

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Count I

1. Dewayne Pool ("Respondent") is an individual person.
2. For all periods of time relevant to the violation alleged herein, Respondent owned a residential property located at 2913 Englewood Terrace, Independence, Missouri (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. On or about November 15, 2001, Respondent entered into a rental agreement (the "Contract") with John and Charlotte Reilly for the lease of Respondent's Property for residential use.
6. As a result of the Contract described in Paragraph 5 above, Respondent became the "lessor," and John and Charlotte Reilly became the "lessees," as those terms are defined by 40 C.F.R. § 745.103.
7. John and Charlotte Reilly subsequently moved into the Property along with one child.
8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

9. Respondent did not provide an EPA-approved lead hazard information pamphlet to John and Charlotte Reilly prior to being obligated under the rental Contract described in Paragraph 5 above.

10. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to John and Charlotte Reilly prior to being obligated under the rental Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

#### CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. Respondent waives his right to contest Complainant's allegations above, and his right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, he is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of One Thousand Eight Hundred Dollars (\$1,800) to be paid within forty-five (45) days of the effective date of the Final Order.

6. Respondent understands that his failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case,

interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of One Thousand Eight Hundred Dollars (\$1,800) due within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency, Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Deanna Smith  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT:  
DEWAYNE POOL  
KANSAS CITY, MISSOURI

Date 8-18-2003

By Dewayne B Pool  
Dewayne Pool

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 8/26/03

By William A. Spratlin  
William A. Spratlin  
Director  
Air, RCRA, and Toxics Division

Date 8/18/03

By Becky Dolph  
Becky Ingrum Dolph  
Deputy Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer

Date September 17, 2003

IN THE MATTER OF Dewayne Pool, Respondent  
Docket No. TSCA-07-2003-0306

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Becky Ingrum Dolph  
Deputy Regional Counsel  
Regulatory Programs  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Dewayne Pool  
5420 Phelps  
Kansas City, Missouri 64136

Dated: 9/19/03

  
Kathy Robinson  
Regional Hearing Clerk